



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTON
ATTORNEY GENERAL

October 2, 1990

Mr. G. Mike Davis
Assistant State Fire Marshal
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

OR90-462

Dear Mr. Davis:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10525.

You have received a request for an analysis of test results from an unsuccessful applicant for a portable fire extinguisher license. The requestor seeks a "very specific" analysis of certain enumerated questions, statistical information on pass rates this year, statistics on the number of applicants failing the same items as the requestor, and any opinion of "any statistical correlation as to this data." You advise us that you have sent the requestor the general analysis of test results mandated by the Texas Insurance Code, but you raise exceptions as to the other information, specifically, sections 3(a)(1), 3(a)(11), and 3(a)(22) of the Open Records Act.

We have considered the exceptions you claim, and have determined that the requestor is only entitled to the information on pass rates this year, if he can obtain this information through reviewing your list of applicants and scores. You are correct in claiming that section 3(a)(22) exempts from disclosure test items and test answers developed by licensing agencies. A previous determination of this office, Open Records Decision No. 537 (1990), a copy of which is enclosed, ruled that section 3(a)(22) protects examination questions and answers within the statute. We agree that a specific analysis of test questions is the equivalent of disclosure of test answers, and therefore find

that the requestor is not entitled to the "specific analysis" of test questions that he seeks.

You also contend that the requestor is not entitled to the statistical information he seeks because such information was not in existence at the time of the request. The Open Records Act does not require a governmental body to prepare new information, or to prepare information in the form desired by the requestor. See Attorney General Opinion JM-672 (1987); Open Records Decision No. 452 (1986). If the statistics sought do not exist, you are not required to compile them. The preparation of statistics derived from raw data is a creation of new material not required by the act. See Attorney General Opinion JM-672. This opinion assumes that the statistics have not been compiled to date.

You acknowledge that, although your agency has not compiled these statistics, one could obtain them from raw data in your possession. However, you object to allowing a requestor-conducted search, claiming that this would disclose protected information. We agree with your contention, under section 3(a)(22), as to the data about the number of applicants missing the same items as the requestor, if the derivation of this data would necessitate viewing test answer keys indicating correct and incorrect answers to the multiple-choice questions.


On the other hand, we find that you must allow the requestor to derive the information about pass rates by viewing the sheets with applicant lists and scores. Your concern that viewing these sheets would reveal individual applicants' test scores, and thus violate a privacy interest protected under section 3(a)(1), is unwarranted. An applicant's score on a state agency's licensing exam, even a failing one, is neither a highly intimate or embarrassing fact about private affairs; nor is it of no legitimate public concern, as would be required to fit within the section 3(a)(1) protection for public disclosure of private facts. See Open Records Decision No. 441 (1986); Industrial Found. of the South v. Texas Indus. Accident Bd., 540 S.W.2d 668, (Tex. 1976), cert. denied, 430 U.S. 930 (1977).

Finally, you are not required to disclose any opinion of any statistical correlation of test data. You are correct in claiming that section 3(a)(11) would protect such an opinion as intra-agency advice, opinion, or recommendation.

Because case law and prior published open records decisions resolve your request, we are resolving this matter

with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-462.

Yours very truly,


Faith Steinberg
Assistant Attorney General
Opinion Committee

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Ref.: ID# 10525

Enclosure: Open Records Decision Nos. 441, 537, 452

cc: Steven L. Garland
P.O. Box 3082
Pasadena, Texas 77501-3082